

purchases. Instead, the costs were passed on to telephone subscribers by the local telephone company. 62/ In contrast, under LeJeune's proposal, the database would be self-supporting because costs would be recovered from telemarketers.

Adoption of LeJeune's proposal would avoid the high cost and technological obstacles presented by an on-line system. The system relies on inexpensive, currently available technology. Database information, distributed by diskette or paper media, can be provided at a cost that even the smallest telemarketer can afford.

C. A National Database Would Not Be Overly Burdensome for Telemarketers.

As discussed above, the costs of the database system would be recouped through subscription fees from telemarketers ranging from approximately \$50 to \$750 a quarter depending upon the geographic scope of the list. These charges would be an entirely reasonable cost of doing business. As the Notice observes, telemarketing is a \$435 billion industry. National telemarketers currently spend hundreds of thousands, or even millions, of dollars in telecommunications and prospecting charges. Telemarketers already purchase prospect lists, often spending between \$35 - \$100 for every 1,000 names on a

62/ NYNEX at 18.

single-use list. In addition to the cost of obtaining a list, each number on the list represents a corresponding local or long distance phone charge when a solicitation is made. In these circumstances, acquisition of an appropriate "Do Not Call" list would represent a small incremental cost to protect consumer privacy. Moreover, it is likely that telemarketers would recoup much of the cost of compliance in telephone savings by avoiding calls to unwilling consumers.

Companies represented by independent agents, such as Amway, Avon or Mary Kay, expressed concern that the database would be too expensive to implement for their agents. 63/ However, these concerns are unjustified. Some criticism was predicated on estimates of \$250 - \$1,000 for a paper copy of the list. 64/ Others anticipated undue expense on the assumption that telemarketers would have to purchase expensive equipment to access the database. 65/ LeJeune notes that a printout of the list could be made available for the area code or exchange in which an independent sales agent operates for a minimal charge. Use of a local printed list would not require additional equipment. This would bring the cost of implementation within a

63/ Amway at 2; Direct Selling Assoc. at 3.

64/ See Mary Kay at 1; Direct Selling Assoc. at 2.

65/ Direct Selling Assoc. at 3.

reasonable range and make number verification manageable for small local marketing efforts. Amway suggests that checking numbers against a directory listing is easy for independent agents to do. 66/ A sequential list of "Do Not Call" numbers would be even easier to check. 67/

D. A National Database Will Protect Consumer Privacy.

Some commenters -- but significantly, not consumer groups -- voiced concern that a national database would impinge on the privacy of consumers who would have to list their name, address and phone number in the database. 68/ In actuality, the database would protect a consumer's identity. Under the Act the database administrator is precluded from releasing information to telemarketers for illegitimate purposes.

66/ Amway at 3.

67/ In addition, direct sales companies are concerned that due to high turnover in the sales force, it would be difficult to track "existing business relationships" that fall within the exemption. See Avon at 1. There is no way to evaluate the extent of this problem, but the inability of one company or another to track its customer base is not a reason to avoid implementation of a national database.

68/ See, e.g., Bell Atlantic at 5; Sears, Roebuck at 5; JC Penney at 23.

Telemarketers would be provided with phone numbers only. 69/ Finally, of course, concerned consumers also have the choice of not participating in the database.

The use of a national database is clearly superior to reliance on company or industry-specific lists. Under a company or industry list scheme, consumers seeking refuge from incoming calls would have to repeatedly provide companies with their name, address and phone number in order to be placed on the lists. 70/ There is no restriction on the dissemination of these lists, so consumers' privacy rights are completely unprotected.

69/ DMA misconstrues the language of the statute by asserting that the national database could only contain phone numbers. DMA at 21. While the statute provides for a database "to compile a list of telephone numbers of residential subscribers," § 227(c)(3), it does not state that the database may only contain phone numbers. The TCPA states that Commission regulations should "specify methods for protection of the privacy rights of persons whose numbers are included in such database." Id. at (c)(3)(K). This requirement may limit the release of database information to telemarketers to phone numbers, but it in no way limits the data contained in the database. DMA's erroneous reading of the statute would render this provision superfluous.

70/ See, e.g., DMA at 21, Attachment C.

E. A National Database System Will Simplify
Enforcement by Creating a "Bright Line" Standard.

Several commenters noted that a national database would create enforcement problems for the Commission. 71/ However, as LeJeune previously noted, the variety and number of enforcement mechanisms can only be effectively and equitably coordinated with a clear standard of enforcement. 72/ Such a standard is most easily established with a national database. Reliance on the database list would be prima facie evidence of compliance, thereby establishing a bright line for various adjudicatory bodies to consider in enforcement proceedings. Consumers and telemarketers would be able to quickly and easily assess whether a violation of the Commission's rules had occurred.

71/ See, e.g., DMA at 15 ("third-party involvement could confuse or complicate the determination of responsibility"); Sears Roebuck at 4 (referring to an "enforcement bureaucracy"); Bell Atlantic at 5 (stating that a national database would be expensive to enforce); Safeguard at 12 (noting that FCC time required to handle complaints would be substantial).

72/ LeJeune at 25-26.

III. A NATIONAL DATABASE SYSTEM WOULD ENHANCE CONSUMER CHOICE.

A. A National Database Provides Flexibility to Accommodate Consumer Choices.

Some commenters suggest that a national database would take choices away from consumers. ^{73/} However, consumers would actually gain flexibility through implementation of a national database. Without such a database, consumers who would choose not to receive any commercial solicitations have no protection.

Under a company-specific list system, consumers would be burdened with contacting each and every one of the over 30,000 telemarketing companies. Obviously this is impractical, so consumers in fact could ask that calls stop only after a company has already called them once. This is an ineffective solution for customers who seek not to be contacted at all.

The national database, as proposed by LeJeune, effectively balances the tradeoff between flexibility and implementation. Participation in the database would be voluntary. Consumers who still want to receive calls would be no worse off than they are today -- they can simply choose not to place their name in the database. However, consumers will also have the choice not to receive any calls, and by joining

^{73/} See DMA at 23-24; ANA at 4; JC Penney at 24; Southwestern Bell at 12.

the database list, would have an effective mechanism to enforce that choice.

Moreover, of course, consumers in the national database still could contact those companies from whom they wish to continue to obtain information. Indeed, the Commission might permit marketing groups to develop specific "calling ok" lists from customers that are willing to receive calls from certain kinds of companies or for certain products. However, consumers would remain protected against other unwanted commercial calls. We have also suggested that under the confirmation process discussed above, the database administrator could provide options for listed parties to check off those specific industries from which they nevertheless still wish to receive calls.

Finally, telemarketers still can reach consumers with whom they have a preexisting business relationship. Many commenters note the need for further definition of the "pre-existing business relationship" that would exempt a telemarketer's call. Consumer groups expressed concern that the exemption was too broad ^{74/} and industry comments sought assurance that the exemption would pertain to specific types of

^{74/} See, e.g., Ohio PUC at 3-4 (arguing that prior business relationship must be based on a voluntary two-way communication and cannot consist solely of a prior solicitation call).

contacts or relationships. 75/ LeJeune endorses the suggestion of the Ohio PUC that would exempt all calls from businesses with whom a customer had completed a transaction within the last twelve months. 76/

B. A National Database Will Satisfy Consumer Expectations.

LeJeune disagrees with the commenters who argue that since calls will continue to be placed by non-profit organizations, a national database will not fulfill consumer expectations. 77/ This issue can easily be addressed in the information disseminated to consumers about the database system. These publicity materials should make clear that the "Do Not Call" list established by the database will apply only to commercial solicitations. Consumers will be aware that they will continue to receive calls from non-profit organizations. Armed with this information, many consumers will nonetheless voluntarily choose to enlist in the database expecting to experience an overall reduction in telemarketing contacts. The

75/ See, e.g., Gannett at 3 (asserting that prior business relationships should include newspapers); ANPA at 2 (same); BG&E at 3.

76/ Ohio PUC at 3.

77/ See, e.g., Sears Roebuck at 4-5; LCS at 4; Sprint at 4; MCI at 6.

Commission should not forego the benefits of a nationwide database just because participating consumers will still receive some calls.

Concerns about consumer reaction to the lag time in entering names into the database can be addressed in the same way. Again, consumers should be informed that there will be some delay before their name is entered into the database and disseminated to telemarketers. This lag time will vary with the frequency of updates required by the Commission. However, simply because consumers will be required to wait for a brief period prior to realizing any significant benefits, this is no reason to deny them the opportunity to benefit from a database at all. With a central database, consumers can realize a significant drop in unwanted calls after only a short time. 78/

78/ Indeed, many consumers would prefer to call a single central number and avoid all calls, than undertake to call numerous separate companies and independent organizations prior to realizing a significant drop in intrusive telemarketing contacts.

CONCLUSION

A national database is the most efficient and cost-effective method to implement the TCPA. LeJeune's national database proposal, based on the Florida system, is reasonable and should be adopted. In this way, the Commission can fulfill its Congressional mandate without placing an undue burden on telemarketers.

Respectfully submitted,

LEJEUNE ASSOCIATES OF
FLORIDA

By 

Peter A. Rohrbach
HOGAN & HARTSON
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-8631

Its Attorneys

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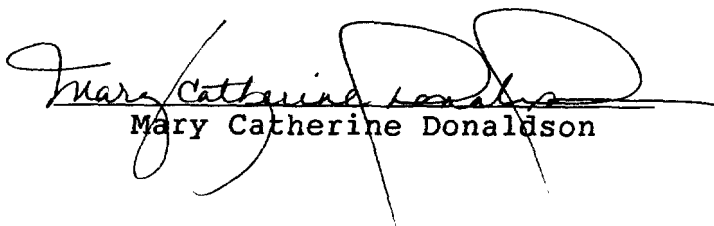
CERTIFICATE OF SERVICE

I, Mary Catherine Donaldson, hereby certify that on this 25th day of June, 1992, a copy of the foregoing "Reply Comments of LeJeune Associates of Florida" was served by hand on the following:

Cheryl Tritt, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. -- Room 500
Washington, D.C. 20554

Olga Madruga-Forti, Esq.
Common Carrier Bureau -- Room 6008
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Downtown Copy Center
1114 21st Street, N.W., -- Suite 140
Washington, D.C. 20037


Mary Catherine Donaldson